

Brand Precision Services and Teamsters, Chauffeurs, Warehousemen and Helpers Local 490, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 20-RC-16970

February 17, 1994

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

On October 29, 1992, the Regional Director for Region 20 issued a Decision and Direction of Election in which he concluded, *inter alia*, that the petitioned-for unit of the Employer's operators was an appropriate unit. The Employer filed a timely request for review on this issue and the Petitioner filed an opposing brief. The Employer's request for review is granted.

The National Labor Relations Board, having carefully examined the record,¹ concludes that a unit of operators, apart from other production employees, is not appropriate.

The Employer provides industrial cleaning services, including high pressure water cleaning (hydroblasting), vacuuming, and separation (dewatering filtration) at its customers' locations. It performs no production work at its facility, which includes an office trailer and warehouse where equipment is stored. The Petitioner seeks a unit limited to the Employer's 16 operators. The Employer argues that the appropriate unit must also include the 32 laborers, 13 leadmen (nonsupervisors), 2 mechanics, and 1 warehouseman. There is no bargaining history.

The National Labor Relations Act allows a union to petition for an appropriate unit. This does not necessarily mean that the unit will be the most appropriate or that there might not be another more appropriate. While we recognize and adhere to this principle, we are unable to find, unlike the Regional Director, that the operators possess a separate community of interest from the Employer's other production employees.

The Employer's work generally is highly integrated, requires constant contact among operators, leadmen, and laborers, and is commonly supervised. Typically, crews are assigned by the Employer's dispatcher the day before the job. The crews assemble at the Employer's facility, take equipment, including vehicles, to the customer, conduct an assigned function, and return to the Employer's facility. A typical crew consists of operators, laborers, and a leadman who work together to complete a job, although crew composition changes on a regular basis depending on customer needs and the overall workload of the Employer. All members of a

crew are commonly supervised at the jobsite by the Employer's supervisor.

The crews assist each other with job assignments and perform limited functions in each other's area. For example, in a typical vacuuming job, the operator drives the rig equipment and the leadman drives the gear truck, with the laborers on board, to the jobsite. At the site, the operators handle the controls and operation of the vacuum equipment, laborers hydroblast material off the tubes and use the other end of the vacuum hose from the vacuum truck to suck waste material from the customer's tanks, and the leadman oversees the entire operation. Leadmen are working foremen who work alongside the laborers. In guzzler work, which differs from typical vacuuming work, laborers, leadmen, and equipment operators work together as a team. On one project, operators operated their equipment and got down in the hole with the hose to help the laborers. The Employer also may require a team that could include operators, laborers, and leadmen in providing numerous other services including waste management; emergency response services; tank cleaning; and industrial cleaning.

Although the Employer's operations differ somewhat at UNOCAL, where the Employer has a contract to provide cleaning services, we believe the Regional Director placed undue emphasis on this exception. There is uncontradicted testimony that the UNOCAL contract constitutes only 10 percent of the Employer's overall work. Contrary to the Regional Director's conclusion that the UNOCAL work constitutes 40 percent of the Employer's operators work, it appears that this figure is a maximum on any given day, and can vary to as low as one percent. Although two of Employer's operators who regularly work at UNOCAL essentially work alone, the record shows that only 3 to 4 of the Employer's 16 operators regularly work at this customer. Moreover, one of these two witnesses testified that he had seen other operators work with the Employer's laborers or leadmen. Finally, to the extent the operators' work at UNOCAL is overseen by other operators, or employees, or supervisors of other companies at the jobsite, this lack of regular Employer supervision for some operators' work contrasts sharply with the Employer's regular, common supervision for the vast majority of the Employer's operators' work.

In finding that the petitioned-for unit is inappropriate, we emphasize that the operators' training, skills, and functions are not distinct from those of the laborers or leadmen. The job description for laborers, operators, and leadmen includes setting up pumps lines, hoses, and support equipment at the jobsite and effectively operating high power water blasting equipment. All the classifications are required to have driver's licenses. Leadmen as well as operators transport equipment to the jobsite and perform vehicle equipment in-

¹ See Board's Rules and Regulations, Sec. 102.67(d) (the Board may, in its discretion, examine the record in evaluating the request for review).

spections. The sole additional requirement for operators is to have a commercial driver's license, pass the Department of Transportation (DOT) physical, and maintain DOT driver's logbooks. Although only operators can drive special vehicles to the jobsites, leadmen as well as operators have operated vacuum, filter, and water blasting equipment (vehicles that do not require class A licenses) on site as long as they are properly trained. The record amply demonstrates that the operators share similar terms and conditions of employment.²

All production employees go through the same new hire training together including safety, application training, and hazardous waste handling. Employees are given 12 hours in basic hydroblasting skills. Although one operator at UNOCAL stated that he was not given the 12-hour training, the job description requires operators be able to operate the water blasting equipment. All production employees attend "tailgate" safety meetings before leaving for a jobsite, although operators also attend other separate safety meetings for their particular work.

With regard to wages and benefits, the operators' wages, at \$9–\$12 an hour, are in the midrange between laborers (\$7–\$10 an hour) and leadmen (\$10–\$13.50 an hour), and overlap both. Operators at UNOCAL are paid a "prevailing wage rate" of \$17 an hour, but there is no evidence that a significant number of operators receive this rate. Employees in all five classifica-

tions receive the same benefits and are subject to the same policies and procedures.

Although there is no evidence that laborers, leadmen, and operators substitute for one another, and there have been few permanent transfers between operators and the other classifications, portions of all 3 jobs overlap. Some operators have done laborer work. Laborers spend up to 10 percent of their time doing operator work. One operator who has not done laborer work testified that he had been requested to do so but refused due to his age. The other operator who testified that he did not perform laborer work admitted that he performed some manual work related to operation of his truck. Leadmen have operated some of the equipment normally handled by operators.

In these circumstances, we find that the grouping chosen by the Petitioner is an arbitrary one, and should be rejected. *Transerv Systems*, 311 NLRB 766 (1993); *Phoenician*, 308 NLRB 826 (1992); cf. *A. C. Pavement Striping Co.*, 296 NLRB 206 (1989). In rejecting the petitioned-for unit, we do not suggest a precise unit finding. We note that the Employer has agreed with the Regional Director that there is very little evidence regarding two other classifications that the Employer seeks to include in the unit—the warehouseman and the mechanics. We therefore reverse the Regional Director and direct that the petition be dismissed without prejudice to the Petitioner's right to refile a petition in another unit.

ORDER

The petition is dismissed.

²UNOCAL does not permit nonoperators to operate special equipment on the site, but one of the operator witnesses did allow nonoperators to handle the equipment before UNOCAL prohibited him from doing so.